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REMARKS

In response to the Office Action dated December 6, 2006, Applicants respectfully request reconsideration based on the above amendments and the following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance.

Claims 1-9 and 20-27 are pending in the present Application. Claim 21 has been amended, and claims 23-27 have been added, leaving Claims 1-9 and 20-27 for consideration upon entry of the present Amendment. No new matter has been introduced by these amendments. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1, 4, 6, 7-9, and 20-21 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Forslund et al. (US 6250557) in view of Moskowitz et al. (US 20040015403). Applicants respectfully traverse this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicants respectfully point out that the Office has mischaracterized certain limitations in both Forslund and Moskowitz, as now described. Specifically, Forslund does in fact, and in contrast to the assertion made in the Office action, have regard and identification of specific product or service providers when the user both makes the shopping list and enters a mall. Forslund states, "prior to going to a mall, the user can store a list of items to be purchased at the mall in an appropriate smart card in the wallet. The wallet also contains a smart card with *a list of discount offers entered by the user based on coupons*

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received from some stores in that mall. As the user enters the mall, the user causes the smart card wallet to broadcast its list of services provided, *which includes the list of items to be purchased and the store discount information.*" [emphasis added] (col. 8 lines 56-63). Therefore, when the user begins a transmission via the smart card wallet, the transmission includes provider-specific information, as well as the ability to provide those goods or services as evidenced by the fact that a discount has been previously offered by specific providers. Forslund requires a smart card, and possibly multiple smart cards, which then in turn communicate with another device, such as a cellular telephone. In contrast, Applicants' claimed method includes iteratively transmitting "a first signal including a first data message using *a mobile transceiver device*, the first data message having information relating to the desired product or service, the first signal being transmitted to product or service providers within a broadcast range of the mobile transceiver device *regardless of identities of the product or service providers and abilities of the product or service providers to provide the desired product or service*"[emphasis added].

Furthermore Moskowitz states, "Both the customer's wireless device and the merchant's wireless device periodically *transmit a short range identity signal.* When the merchant's fixed position wireless device detects the presence of the customer's nearby portable wireless device, the merchant's device [then] sends the merchant's menu of goods and/or services to the customer's device and requests the customer's data relating to customer preferences and past transactions with the merchant. Such customer data includes the types of merchandise previously purchased, the customer's preferences, the dates of recent purchases, etc. The customer data is stored in the customer's private database in the customer's portable wireless device. The customer's device may be used as an insitu device in which the customer's device is located within a specific store, or other location, in which the customer's device is used or places an order." Therefore, with regard to Moskowitz, Applicants respectfully point out that the periodic signal that Moskowitz's wireless devices generate is simply an identification signal *without* any information. Moskowitz's signal simply determines whether two devices are within range. It is then that the *merchant* sends a list of goods and services. Therefore, Moskowitz does periodically generate an identity signal, but without any data. Then the merchant, and not the user, transmits a list of goods and services *once* and not iteratively. Furthermore, the list of goods and services is based on user

preferences, which once again differentiates from Applicants' claimed invention, in which the user's cellular telephone transmits a signal "regardless of identities of the product or service providers and abilities of the product or service providers to provide the desired product or service". Therefore, as admitted in the Office Action, Forslund does not teach that "the message is iteratively transmitted to the product or service providers" and Moskowitz does not cure this deficiency. As just discussed, only an identity signal containing no message is periodically transmitted by the user and the merchant. Then the *merchant* sends a single message, not an iterative message.

Therefore, Applicants respectfully submits that if Forslund and Moskowitz are combined, at least the features of Claims 1 and 20, discussed above, are not taught. Claims 4, 6-9 and 21 variously depend from Claim 1 and are patentable over Forslund in view of Moskowitz for at least the reasons advanced with reference to Claims 1 and 20.

Further, regarding Claim 21, the cited portions of the specification of Moskowitz, that is, 0017-0018, 0023-0024 do not teach transmissions in various protocols. In fact, the cited sections merely discuss, in great detail, the Bluetooth communications protocol. The Office Action has provided no further citations indicating that multiple communication protocols are implemented, supporting the rejection of Claim 21. For this further reason, Claim 21 is patentable over Forslund in view of Moskowitz.

Claims 2-3 and 5 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Forslund et al. (US 6250557) in view of Moskowitz et al. (US 20040015403) as applied to claims 1,4, 6-9 and 20-21, and in further view of Walker et al. (US 5794207). Applicants respectfully traverse this rejection. Claims 2-3 and 5 variously depend from Claim 1 and are patentable over Forslund in view of Moskowitz and in further view of Walker for at least the reasons advanced with reference to Claim 1.

Claims 2-3 and 5 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Forslund et al. (US 6250557) in view of Moskowitz et al. (US 20040015403) as applied to claims 1,4, 6-9 and 20-21, and in further view of Silverman et al. (US 5136501). Applicants respectfully traverse this rejection. Applicants respectfully point out that the Office Action has stated that Claims 2-3 and 5 were rejected as allegedly unpatentable over Forslund et al. (US 6250557) in view of Moskowitz et al. However, the Office Action has only presented a basis of rejection for Claim 22. In order to be responsive, Applicants

respectfully submit that any of claims 2-3, 5 and 22 variously depend from Claim 1 and are patentable over Forslund in view of Moskowitz and further in view of Silverman for at least the reasons advanced with reference to Claim 1.

New Claims

Claims 23-27 have been added to further claim the invention.

Antecedent basis for claims 23-25 is found at least at paragraph [0021].

Antecedent basis for claims 26-27 is found at least at paragraphs [0030], [0031] and [0041].

New claims 23-27 are allowable over the cited art for at least the reasons given above with regarding to claim 1.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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